



Sale and Delivery of unmarked Cigarettes

This bulletin was revised June 2008 to incorporate formatting changes and changes in ministry name and contact information only.

- The purpose of this bulletin is to remind Ontario dealers of their statutory obligations with respect to the sale and delivery of unmarked cigarettes.
- This bulletin provides general information. It is not exhaustive and should not be considered as a substitute for the *Tobacco Tax Act* and its regulations.

Ontario's Tobacco Marking Program

Marked cigarettes In 1990, Ontario introduced a system of marking taxable cigarettes to improve compliance with the *Tobacco Tax Act* ("Act"). Under this system, distinctive marking is required on all packages of taxable cigarettes intended for sale in Ontario. Cigarettes are marked by markers and stampers who are authorized and registered by the Province. The marking signifies that tobacco tax has been properly accounted for.

Unmarked cigarettes Cigarette packages not bearing the designated marking for Ontario are untaxed by Ontario and may be used by authorized persons for:

1. sale and delivery on a reserve to Indians for their exclusive use;
2. sale to certain members of the Diplomatic Corps stationed in Ontario for their exclusive use;
3. export to a jurisdiction outside Ontario.

Who may sell unmarked cigarettes?

Permit required Under the Act, no person shall purchase, possess, store or sell unmarked cigarettes in Ontario without a permit or authorization to do so.

Wholesalers who require unmarked cigarettes for export or for tax-exempt sales in Ontario must obtain a **Permit to Purchase and Sell Unmarked Cigarettes** to acquire, store and sell unmarked cigarettes. The Act prohibits the sale of unmarked or unstamped cigarettes, to consumers in Ontario required to pay tobacco tax.

Who may apply for a permit? Only a **wholesaler** who is a designated collector may apply for a Permit to Purchase and Sell Unmarked Cigarettes. Wholesale dealers who are not designated collectors and retail dealers are **not** eligible for such a permit and must ensure that all of the cigarettes that they purchase are Ontario marked cigarettes.

Conditions and restrictions A Permit to Purchase and Sell Unmarked Cigarettes may only be used to acquire unmarked cigarettes for the purpose(s) stated on the permit.

Unmarked cigarettes must be stored only at locations authorized by the Minister.

Security required	The Minister may demand security from every person who applies for or is the holder of a permit to purchase or sell unmarked cigarettes (“permit holder”) in an amount equal to the greater of \$500,000 or an average three months of tax that would be collectable or payable by the person. The average three months of tax is calculated on the basis of the twelve-month period preceding the Minister's demand as if the person's acquisition of unmarked cigarettes were marked cigarettes that were sold to consumers in Ontario during the twelve-month period.
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Restricted Uses

Delivery onto reserves	Unmarked cigarettes acquired under a Permit to Purchase and Sell Unmarked Cigarettes must not be used for any purpose other than: <ul style="list-style-type: none"> for sales and delivery to authorized retailers on reserves in Ontario (the unmarked cigarettes must be delivered by the permit holder to the reserve on which the authorized retailer is located);
Sales to diplomats	<ul style="list-style-type: none"> for sales to diplomats who are listed in the “Diplomatic List and Representatives of Other Countries” as published by the Department of Foreign Affairs and International Trade (formerly External Affairs) at the relevant time; or
Export	<ul style="list-style-type: none"> for export and resale in a jurisdiction outside Ontario in which the permit holder is designated in writing to collect the cigarette tax levied by that jurisdiction (the permit holder must also be registered with Ontario as an exporter).
Cigarettes marked for another jurisdiction	Cigarettes marked for sale in a jurisdiction other than Ontario held by authorized Ontario dealers are reserved for export to such other jurisdictions.
Who is an authorized retailer?	An authorized retailer means a retail dealer situated on a reserve who is authorized by the Minister of Revenue to purchase unmarked cigarettes from a permit holder.

Record-Keeping Requirements

Unmarked cigarette permit holders must keep proper invoices identifying each purchaser's name and business address and the actual delivery address for each sale of unmarked cigarettes.

Penalties for Non-compliance

Fines	Under the Act, it is an offence for the permit holder to contravene the Act or the Regulations or any condition or restriction contained in the person's permit. Upon conviction, the permit holder would be liable to pay a fine of up to \$10,000 plus not less than three times the tax which was otherwise payable.
	Any person convicted for having possession of unmarked cigarettes other than as permitted under the Act is liable to pay a fine of up to \$10,000 plus an additional fine of not less than 30¢ per cigarette and up to two years in jail.

Forfeiture	Unmarked cigarettes held or transported except as permitted under the Act may be subject to forfeiture.
Assessed penalty	Where any person has possession of unmarked cigarettes, or sells, offers for sale or keeps for sale unmarked cigarettes, except as permitted under the Act, the Minister may assess the person a penalty in an amount up to \$130 per carton.

Additional Information

If this bulletin does not completely address your particular situation, refer to the Act and related regulations, or contact the:

Ministry of Revenue
Client Accounts and Services Branch
33 King Street West
Oshawa, ON L1H 8H9

Tel.: 1 866 ONT-TAXS (1 866 668-8297)
Fax: 905 436-4511
Teletypewriter (TTY): 1 800 263-7776

This bulletin and various other English and French tax materials published by the Ministry of Revenue may be obtained online at ontario.ca/revenue.

The *Tobacco Tax Act* and Ontario's other public statutes and regulations may be obtained online at www.e-laws.gov.on.ca.

Ce bulletin est disponible en français.

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